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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re SHAWN J., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWN J.,

Defendant and Appellant.

B207843

(Los Angeles County
Super. Ct. No. FJ42818)

APPEAL from an order of the Superior Court of Los Angeles County, Shep A. Zebberman, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan D. Martynec and Joseph P. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Shawn J. appeals from the order of wardship (Welf. & Inst. Code, § 602) entered following his admission that he committed assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). The court ordered appellant placed home on probation. We affirm the order of wardship.

FACTUAL SUMMARY

The record reflects that on March 3, 2008, appellant, who was 11 years old, committed the above offense in Los Angeles, shooting another minor with a BB gun.

CONTENTIONS

Appellant claims (1) the trial court erroneously denied his Welfare and Institutions Code section 701.1 motion and (2) there was insufficient evidence that appellant knew the wrongfulness of his conduct.

DISCUSSION

Appellant's Sufficiency Challenges Are Not Cognizable On Appeal.

1. Pertinent Facts.

Count 1 of a petition filed March 5, 2008, alleged that appellant committed “assault with a deadly weapon . . . to wit, BB gun,” (some capitalization omitted) on [the victim] in violation of Penal Code section 245, subdivision (a)(1). At appellant’s May 8, 2008 adjudication, the People presented evidence that the above shooting constituted a violation of Penal Code section 245, subdivision (a)(1),¹ and that, for purposes of *In re Gladys R.* (1970) 1 Cal.3d 855, 862 (*Gladys R.*), appellant knew the wrongfulness of his conduct.

Appellant, pursuant to Welfare and Institutions Code section 701.1,² moved to dismiss the petition on the ground there was insufficient evidence that the BB gun was a

¹ Penal Code section 245, subdivision (a)(1), states, in relevant part, “Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison”

² Welfare and Institutions Code section 701.1, states, “At the hearing, the court, on motion of the minor or on its own motion, shall order that the petition be dismissed and that the minor be discharged from any detention or restriction therefore ordered, after the

deadly weapon. The court denied the motion. In defense, appellant testified to the effect that the gun was not a deadly weapon; therefore, no violation of Penal Code section 245, subdivision (a)(1) occurred.

After appellant testified, he moved for a continuance so he could have an expert test the gun to help determine whether it was a deadly weapon. The prosecutor suggested the gun could be brought to court the following Monday, and the court asked if appellant wanted to continue the case to that date. Appellant's counsel indicated he would determine if appellant was willing to waive time and stay in juvenile hall in the interim. The court indicated that, based on the evidence the court had heard thus far, the court was inclined to find the BB gun was a dangerous weapon.

After a recess, appellant's counsel indicated that appellant "want[ed] to admit the petition," and the court asked the prosecutor to take the "waiver and admission." The prosecutor advised appellant as to the nature of the charge, his constitutional rights, and the consequences of his admission, and appellant waived his constitutional rights.

Appellant said he was "admitting" the charge freely and voluntarily because it was in his best interest to do so. He also said that neither appellant nor anyone close to him had been threatened to get appellant to "admit today," and no one had made unrecorded promises to get appellant to "admit today." Appellant said his parents had taught him the difference between "doing what's right and wrong," his mother taught him this, and, before March 3, 2008, he knew it was wrong to shoot someone with a BB gun.

The following then occurred: "By [The Prosecutor]: Shawn [J.], in case [FJ42818] filed on March 5, 2008, do you admit or deny, . . . as to count 1, violation of Penal Code section 245 (a)(1), a misdemeanor, to the crime of assault with a deadly weapon, do you admit or deny the charge? [¶] [Appellant:] Admit." Appellant's counsel joined in the

presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602. If such a motion at the close of evidence offered by the petitioner is not granted, the minor may offer evidence without first having reserved that right."

waivers, concurred in the admission, and stipulated to a factual basis for the plea pursuant to “People v. West.”

The court found, *inter alia*, that “[t]he admission by the minor is freely and voluntarily made,” there was a factual basis for the admission, and the allegations of the petition were true. The May 8, 2008 minute order reflects, “Minor . . . admits . . . [p]etition filed [March 5, 2008].” The order also reflects, “[t]he petition filed [March 5, 2008] is . . . true, and said petition is sustained. *Gladys R.* is satisfied.” (Some capitalization omitted.)

b. *Analysis.*

“Courts have held that [Penal Code] section 701.1 is substantially similar to Penal Code section 1118 governing motions to acquit in criminal trials and that therefore the ‘rules and procedures applicable to [Penal Code] section 1118 . . . apply with equal force to juvenile proceedings.’ [Citation.] [¶] Thus, the requirement in a criminal case that on a motion for acquittal the trial court is required ‘to weigh the evidence, evaluate the credibility of witnesses, and determine that the case against the defendant is “proved beyond a reasonable doubt before [the defendant] is required to put on a defense” ’ applies equally well to motions to dismiss brought in juvenile proceedings. [Citation.]” (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 727, fn. omitted.)

Moreover, the identical standard of appellate review is applied to Welfare and Institutions Code section 701.1, and Penal Code section 1118, motions, i.e., the substantial evidence standard. (*In re Andre G.* (1989) 210 Cal.App.3d 62, 66, fn. 5; *In re Man J.* (1983) 149 Cal.App.3d 475, 482.)

Our Supreme Court observed in *People v. Chadd* (1981) 28 Cal.3d 739, that “[a] plea of guilty, of course, is the most serious step a defendant can take in a criminal prosecution.” The court later stated, “*because there will be no trial* the plea strips the defendant of such fundamental protections as the privilege against self-incrimination, the right to a jury, and the right of confrontation. [Citations.] As to the merits, the plea is deemed to constitute a *judicial admission of every element of the offense charged*. [Citation.] Indeed, it serves as a *stipulation* that the People *need introduce no proof*

whatever to support the accusation: the plea ipso facto supplies both evidence and verdict. [Citation.] ‘A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; *nothing* remains but to give judgment and determine punishment.’ [Citation.]” (*People v. Chadd, supra*, at p. 748, italics added; see *In re Troy Z.* (1992) 3 Cal.4th 1170, 1180-1181 (*Troy Z.*.) A guilty plea “*concedes* that the prosecution possesses legally admissible evidence sufficient to *prove* defendant’s guilt beyond a reasonable doubt.” (*People v. Turner* (1985) 171 Cal.App.3d 116, 125, italics added.)

“Accordingly, a plea of guilty waives any right to raise questions regarding the evidence, *including its sufficiency* or admissibility, and this is true whether or not the subsequent claim of evidentiary error is founded on constitutional violations. (*Ibid.*) [Fn. omitted.]” (*People v. Turner, supra*, 171 Cal.App.3d at p. 125, italics added; cf. *People v. Suite* (1980) 101 Cal.App.3d 680, 689; see *People v. Stanworth* (1974) 11 Cal.3d 588, 604-606.) “[T]he appellate courts have held that a guilty plea waives issues involving . . . the sufficiency of the evidence . . . at trial [citations][.]” (*People v. Turner, supra*, at p. 127.)

As the Supreme Court explained in *People v. Martin* (1973) 9 Cal.3d 687, “[t]he rationale upon which we have held that a defendant who enters a guilty plea waives his right to an appellate challenge based on insufficiency of the evidence [citations], follows from the defendant’s implied admission that the People *have established or can establish every element of the charged offense*, thus obviating the need for the People to come forward with *any* evidence. [Citations.]” (*Id.* at pp. 693-694, first italics added.) “[A]ll errors arising prior to entry of a guilty plea are waived, except those which question the jurisdiction or legality of the proceedings resulting in the plea.” (*People v. Kaanehe* (1977) 19 Cal.3d 1, 9.) “[A]n ‘admission’ . . . is the juvenile court equivalent of a plea of . . . ‘guilty’ in criminal courts.” (*Troy Z., supra*, 3 Cal.4th at p. 1181.)

The essence of appellant's claims appears to be that, based on the People's evidence presented during the evidentiary hearing at the adjudication, there was insufficient evidence that appellant committed the present offense (i.e., insufficient evidence that the gun was a deadly weapon) and insufficient evidence that he knew the wrongfulness of his act for purposes of *Gladys R.*³ However, appellant was represented by counsel in the trial court and, as appellant concedes here, appellant admitted to the trial court that he committed the offense of assault with a deadly weapon as alleged in this case.⁴

In light of the foregoing authorities, we hold that appellant, by his admission, waived his right to appellate challenges based on the alleged insufficiency of the People's

³ "Penal Code section 26 articulates a presumption that a minor under the age of 14 is incapable of committing a crime. (Pen. Code, § 26, subd. One.) To defeat the presumption, the People must show by 'clear proof' that at the time the minor committed the charged act, he or she knew of its wrongfulness. This provision applies to proceedings under Welfare and Institutions Code section 602. (*In re Gladys R.*, *supra*, 1 Cal.3d at p. 867.) Only those minors over the age of 14, who may be presumed to understand the wrongfulness of their acts, and those under 14 who--as demonstrated by their age, experience, conduct, and knowledge--clearly appreciate the wrongfulness of their conduct rightly may be made wards of the court in our juvenile justice system. (*Ibid.*)" (*In re Manuel L.* (1994) 7 Cal.4th 229, 231-232, fns. omitted.)

⁴ We note that, during the taking of the admission, appellant stated his parents had taught him the difference between "doing what's right and wrong," his mother taught him this, and, before March 3, 2008, he knew it was wrong to shoot someone with a BB gun. Appellant made these statements (1) directly to the trial court, which could view his demeanor and directly assess his credibility and (2) before appellant admitted the present offense. Whatever appellant's claims are concerning the *evidence* presented during the evidentiary hearing at the adjudication, appellant does not expressly claim the trial court could not have relied upon these statements which appellant made *during the taking of his admission* to conclude appellant knew the wrongfulness of his act. These statements provided substantial proof of that knowledge and supported the trial court's implied finding that appellant had the requisite knowledge. (Cf. *In re Jerry M.* (1997) 59 Cal.App.4th 289, 297-298.)

evidence, and they are not cognizable on appeal.⁵ As *Troy Z.* similarly concluded in the analogous context of a guilty plea, “. . . ‘The issues presently sought to be raised do not attack the proceedings resulting in the plea. Rather, defendant’s contention[s] . . . go solely and directly to the question whether he was in fact guilty of the charged offense. However, his plea of guilty “operated to remove such issues from consideration as a plea of guilty admits all matters essential to the conviction.” [Citation.] *Consequently, these issues are simply not cognizable on the present appeal . . .*’ [Citations.]” (*Troy Z. supra*, 3 Cal.4th at pp. 1180-1181.)

Appellant argues a different result should obtain because he “is not challenging the sufficiency of the evidence after the plea, but is challenging the juvenile court’s denial of appellant’s motion to dismiss after the prosecution rested which occurred before he admitted the petition.” We agree appellant admitted the petition, but otherwise reject his argument. Appellant’s admission is the equivalent of a guilty plea, his claims are improper postadmission sufficiency challenges, and his motion for dismissal merely limits to the People’s evidence the preadmission evidence to which his improper challenges purport to apply.

Appellant’s reliance upon the adult cases of *People v. Trevino* (1985) 39 Cal.3d 667, and *People v. Belton* (1979) 23 Cal.3d 516, and upon the juvenile cases of *In re Anthony J.*, *supra*, 117 Cal.App.4th 718, and *In re Andre G.*, *supra*, 210 Cal.App.3d 62, is misplaced. In none of those cases did the adult defendants enter a guilty plea, or the juvenile defendants enter an admission, following the trial court’s denial of a Penal Code section 1118 motion, or Welfare and Institutions Code section 701.1 motion, respectively, made after the presentation of the People’s evidence but before the presentation of the defense evidence.

⁵ If appellant’s sufficiency challenges had extended to the defense evidence and not merely to the People’s evidence, we would have held that his admission waived those sufficiency challenges as well. In light of our holding, there is no need to reach the merits of appellant’s questionable claims as to the sufficiency of the preadmission evidence.

DISPOSITION

The order of wardship is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.